

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DEUTSCHE BANK NATIONAL
TRUST COMPANY, as Indenture
Trustee, for New Century Home
Equity Loan Trust 2005-1,

Plaintiff,

v.

SAMIRA GHOSAL, et al.,

Defendants.

CASE NO. 14cv2582-GPC(WVG)

**ORDER *SUA SPONTE*
REMANDING ACTION TO STATE
COURT**

On October 29, 2014, Defendants Samira Ghosal and Francis Ghosal (“Defendants”) filed a notice of removal of this unlawful detainer action from the Superior Court of the State of California for San Diego County. Having reviewed Defendants’ notice of removal, the Court finds it does not have subject matter jurisdiction over this action. Accordingly, the Court *sua sponte* REMANDS the action to state court.

Discussion

The federal court is one of limited jurisdiction. *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 997 (9th Cir. 2007). It possesses only that power authorized by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is constitutionally required to raise issues related to federal subject matter jurisdiction, and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env’t*,

1 523 U.S. 83, 93-94 (1998); *see also Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090,
2 1092 (9th Cir. 1990). Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq.*
3 A state court action can only be removed if it could have originally been brought in
4 federal court. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 (1987); *Duncan v.*
5 *Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). Thus, for an action to be removed on the
6 basis of federal question jurisdiction, the complaint must establish either that federal
7 law creates the cause of action or that the plaintiff's right to relief necessarily depends
8 on the resolution of substantial questions of federal law. *Franchise Tax Board of Cal.*
9 *v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1, 10-11 (1983).
10 Alternatively, a federal court may have diversity jurisdiction over an action involving
11 citizens of different states where the amount in controversy exceeds \$75,000.
12 28 U.S.C. § 1332.

13 The presence or absence of federal question jurisdiction "is governed by the
14 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when
15 a federal question is presented on the face of plaintiff's properly pleaded complaint."
16 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). A review of the state court
17 complaint in this case shows that Plaintiff alleges a single unlawful detainer claim
18 under California state law. (Dkt. No. 1-1.)

19 "The burden of establishing federal jurisdiction is on the party seeking removal,
20 and the removal statute is strictly construed against removal jurisdiction." *Emrich v.*
21 *Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). "Federal jurisdiction must
22 be rejected if there is any doubt as to the right of removal in the first instance." *Gaus*
23 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

24 In the notice of removal, Defendants allege that the Court has jurisdiction
25 pursuant to federal question. (Dkt. No. 1.) Specifically, Defendants contend that
26 federal question jurisdiction exists because "Plaintiff's claim is based upon a notice
27 which expressly references and incorporates the 'Protecting Tenants at Foreclosure Act
28 of 2009,' 12 U.S.C. § 5201." (Dkt. No. 1 ¶ 7.) Defendants further contend that

1 12 U.S.C. § 5201 “is drawn into this controversy in this action because the federal
2 statute provides for a ninety (90) day notice period prior to the filing of any state
3 eviction proceeding” and “Defendants assert and allege that Plaintiff did not allow the
4 ninety day period to lapse before filing their claim.” (*Id.*)

5 Defendants have not shown that removal is proper on the basis of federal
6 question jurisdiction. The state court pleadings and papers accompanying the removal
7 notice establish that the state court action is nothing more than an unlawful detainer
8 action, and is titled as such. (Dkt. Nos. 1, 1-1, 1-2) This Court has no jurisdiction over
9 unlawful detainer actions, which are brought pursuant to state law and fall strictly
10 within the province of the state court. While Defendants may seek to raise a defense
11 based on federal law in response to Plaintiff’s unlawful detainer claim, any defenses
12 based on federal law must generally be raised in the state court action and do not
13 provide a basis for removal. “A case may not be removed to federal court on the basis
14 of a federal defense . . . even if the defense is anticipated in the plaintiff’s complaint,
15 and even if both parties admit that the defense is the only question truly at issue in the
16 case.” *ARCO Env’tl. Remediation, LLC v. Dep’t of Health & Env’tl. Quality of the State*
17 *of Montana*, 213 F.3d 1108, 1113 (9th Cir. 2000) (citation and quotation marks
18 omitted); *see also Valles v. Ivy Hill Corp.*, 410 F.3d 1071, 1075 (9th Cir. 2005) (“A
19 federal law defense to a state-law claim does not confer jurisdiction on a federal court,
20 even if the defense is that of federal preemption and is anticipated in the plaintiff’s
21 complaint.”). As such, Defendants’ allegations do not establish federal question
22 jurisdiction under 28 U.S.C. § 1331.

23 Furthermore, Defendants do not argue and or otherwise show that removal is
24 proper on the basis of diversity jurisdiction. In the notice of removal, Defendants state
25 that Plaintiff is a limited liability company authorized to do business within the state
26 of California and that Defendants “are individuals and residents of San Diego County,
27 California.” (Dkt. No. 1 ¶¶ 5-6.) Accordingly, it appears that both parties are citizens
28 of California. Therefore, complete diversity is not present and, thus, removal is not

1 proper under diversity jurisdiction. *See* 28 U.S.C. § 1332.

2 Moreover, even assuming that the parties are citizens of different states,
3 Defendants have not demonstrated that the amount in controversy in this case exceeds
4 \$75,000. A review of Plaintiff's complaint confirms that the action was filed as a
5 "limited" civil case where the damages at stake are less than \$10,000. (Dkt. No. 1-1
6 at 8.) When the plaintiff has alleged a specific amount in damages or alleged that
7 damages do not exceed a specified amount, those damages allegations govern the
8 propriety of removal. "Where it is not facially evident from the complaint that more
9 than \$75,000 is in controversy, the removing party must prove, by a preponderance of
10 the evidence, that the amount in controversy meets the jurisdictional threshold."
11 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per
12 curiam). Here, Defendants have not established that this Court can maintain diversity
13 jurisdiction given that, on its face, Plaintiff's complaint conspicuously describes the
14 damages at stake as "not exceed[ing] \$10,000" and seeks "damages in the amount of
15 \$88.77 per day from March 15, 2014." (Dkt. No. 1-1 at 8, 14.)


16 Based on the foregoing, Defendants have not adequately established a basis for
17 this Court's subject matter jurisdiction. The Court must remand the case.
18 *See* 28 U.S.C. § 1447(c).

19 Conclusion

20 Based on the above, the Court *sua sponte* REMANDS the action to the Superior
21 Court of the State of California for San Diego County.

22 **IT IS SO ORDERED.**

23
24 DATED: November 3, 2014

25 
26 HON. GONZALO P. CURIEL
27 United States District Judge
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